

Message Text

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TAGS: ANZUS, PFOR, MARR, MNUC, NZ, CA

SUBJECT: AGREEMENTS ON LIABILITY FOR NUCLEAR INCIDENTS

REF: WELLINGTON 2871 (DTG 310723Z JUL 1976)

1. USG DOES NOT RPT NOT ENTER INTO BILATERAL AGREEMENTS
WITH OTHER STATES ON SUBJECT OF LIABILITY FOR ACCIDENTS
INVOLVING NUCLEAR REACTORS OR NUCLEAR WEAPONS ON US NPWS.
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SUCH ACCIDENTS COULD BE CONSIDERED UNDER GENERAL PRO-

VISIONS OF STATUS OF FORCES AGREEMENTS REGARDING CLAIMS
(E.G. ARTICLE VIII OF NATO SOFA). HOWEVER, ONLY
ASSURANCES GIVEN BY USG ON SPECIFIC QUESTION OF NUCLEAR
INCIDENT LIABILITY ARE UNILATERAL ASSURANCES AS CONTAINED
IN STANDARD STATEMENT ON OPERATION OF US NUCLEAR POWERED
WARSHIPS IN FOREIGN PORTS.

2. STANDARD STATEMENT WAS TRANSMITTED TO CANADIAN GOVERNMENT BY DIPLOMATIC NOTE DATED FEBRUARY 20, 1967. ONLY SUBSTANTIVE PROVISION OF NOTE IS A DECLARATION THAT PARA 3 OF STANDARD STATEMENT RE CLAIMS DOES NOT RPT NOT APPLY IN CASES COVERED BY NATO SOFA. THIS DECLARATION, OF COURSE, IS IRRELEVANT TO NEW ZEALAND. IDENTICAL STANDARD STATEMENT HAS BEEN GIVEN TO GONZ.

3. IN RESPONSE TO CANADIAN REQUEST, USG GAVE GOC AN AIDE-MEMOIRE ON MAY 6, 1968 WHICH EXPRESSED ASSURANCES WITH RESPECT TO NUCLEAR WEAPONS ABOARD US WAR SHIPS VISITING CANADIAN PORTS, SIMILAR TO ASSURANCES CONTAINED IN US STANDARD STATEMENT. USG REGARDS THIS AIDE-MEMOIRE AS A SEPARATE UNILATERAL ASSURANCE AND NOT RPT NOT AS MODIFYING IN ANY WAY THE STANDARD STATEMENT. TEXT OF AIDE-MEMOIRE FOLLOWS:

QUOTE ON MARCH 7, 1968 THE CANADIAN EMBASSY INQUIRED WHETHER ASSURANCES SIMILAR TO THOSE CONTAINED IN THE "STATEMENT BY THE UNITED STATES GOVERNMENT ON THE OPERATION OF UNITED STATES NUCLEAR-POWERED WAR SHIPS IN FOREIGN PORTS" TRANSMITTED TO THE CANADIAN GOVERNMENT ON FEBRUARY 20, 1967 COULD BE GIVEN WITH REGARD TO ACCIDENTS OR INCIDENTS RELATED TO NUCLEAR WEAPONS WHICH MIGHT BE CARRIED ABOARD UNITED STATES WAR SHIPS VISITING CANADIAN PORTS.

QUOTE IN RESPONSE TO THE CANADIAN REQUEST, THE UNITED STATES GOVERNMENT IS PREPARED TO STATE THE FOLLOWING: THE GOVERNMENT OF THE UNITED STATES CERTIFIES THAT ALL SAFETY PRECAUTIONS AND PROCEDURES FOLLOWED IN CONNECTION WITH THE OPERATION OF SUCH SHIPS IN UNITED STATES PORTS WILL BE STRICTLY OBSERVED IN VISITS TO CANADIAN CONFIDENTIAL

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PORTS. THE APPROPRIATE CANADIAN AUTHORITIES WILL BE NOTIFIED IMMEDIATELY IN THE EVENT OF AN ACCIDENT RELATED TO ANY NUCLEAR WEAPONS WHICH MIGHT BE CARRIED ABOARD UNITED STATES WAR SHIPS. CLAIMS, EXCEPT THOSE COVERED BY THE NATO STATUS OF FORCES AGREEMENT, WHICH MIGHT ARISE OUT OF A NUCLEAR ACCIDENT OR INCIDENT WILL BE DEALT WITH THROUGH DIPLOMATIC CHANNELS IN ACCORDANCE WITH CUSTOMARY PROCEDURES FOR THE SETTLEMENT OF INTERNATIONAL CLAIMS

UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND EQUITY.

QUOTE IF THE FOREGOING IS ACCEPTABLE TO THE EMBASSY,
THE UNITED STATES GOVERNMENT WILL CONSIDER THE "STATEMENT"
OF FEBRUARY 20, 1967 AMENDED ACCORDINGLY. END QUOTE.

4. USG WOULD BE PLEASED TO FURNISH GONZ ON A CLASSIFIED BASIS WITH ASSURANCES SIMILAR TO THAT CONTAINED IN AIDE-MEMOIRE QUOTED PARA 3 (EXCEPT IRRELEVANT REFERENCE TO NATO SOFA AND FINAL PARA WHICH, UNFORTUNATELY, REFERRED TO STANDARD STATEMENT). HOWEVER, WE DO NOT RPT NOT WISH TO CONFIRM PUBLICLY EXISTENCE OR CONTENT OF CLASSIFIED AIDE-MEMOIRE WHICH APPEARS TO HAVE BEEN DISCLOSED BY GOC OFFICIALS IN LETTER TO JOURNALIST WITHOUT USG AUTHORIZATION. OF COURSE, ANY SUCH ADDITIONAL ASSURANCE WOULD NOT RPT NOT ALTER IN ANY WAY USG POLICY NEITHER TO CONFIRM

NOR DENY LOCATION OF NUCLEAR WEAPONS, INCLUDING WHETHER SUCH WEAPONS ARE PRESENT ON VISITING US WAR SHIPS.

5. EMBASSY SHOULD BE AWARE IN DISCUSSIONS WITH GONZ OF LIMITED SCOPE OF US PUBLIC LAW 93-513, APPROVED DECEMBER 6, 1974 (HOSMER RESOLUTION), WHICH CONSTITUTES LEGAL AUTHORITY FOR USG TO ASSURE THAT CLAIMS PRESENTED UNDER STANDARD STATEMENT WILL BE CONSIDERED ON BASIS OF ABSOLUTE (NO FAULT) LIABILITY. HOSMER RESOLUTION IS LIMITED TO INCIDENTS INVOLVING NUCLEAR REACTOR OF A US NPW AND DOES NOT ADDRESS QUESTION OF NUCLEAR WEAPONS. ALTHOUGH RATIONALE UNDERLYING ENACTMENT OF HOSMER RESOLUTION GIVES STRONG INDICATION THAT CLAIMS ARISING FROM ANY ACCIDENT INVOLVING A NUCLEAR WEAPON WOULD ALSO BE CONSIDERED BY USG ON BASIS OF ABSOLUTE LIABILITY, WE HAVE NO RPT NO PRESENT LEGAL AUTHORITY TO GIVE COMPREHENSIVE
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ASSURANCE THAT A NUCLEAR WEAPONS CLAIM WOULD BE HANDLED ON THAT BASIS. ACCORDINGLY, ANY ASSURANCE TO GONZ ON NUCLEAR WEAPONS MUST BE KEPT SEPARATE FROM STANDARD STATEMENT. EMBASSY SHOULD SEEK TO AVOID QUESTION OF BASIS FOR CONSIDERING ANY CLAIM ARISING FROM NUCLEAR WEAPONS INCIDENT.

6. FOR RESPONDING TO PRESS QUESTIONS RE EQUALITY OF TREATMENT FOR NEW ZEALAND IN EVENT OF NUCLEAR ACCIDENTS, EMBASSY AUTHORIZED TO DRAW ON FOLLOWING: THE USG HAS GIVEN THE GONZ THE SAME ASSURANCES REGARDING VISITING NUCLEAR POWERED WAR SHIPS AS IT HAS GIVEN TO THE GOVERNMENT OF CANADA AND OTHER ALLIES. AS TO THE MORE GENERAL QUESTION OF LIABILITY IN CONNECTION WITH VISITS TO NEW ZEALAND BY US FORCES, THE SECURITY TREATY ARRANGEMENTS BETWEEN THE TWO GOVERNMENTS TAKE THIS QUESTION FULLY INTO ACCOUNT.

WE ARE CONFIDENT THAT THESE ARRANGEMENTS PROVIDE ADEQUATE SAFETY PRECAUTIONS AGAINST INJURY TO PERSONS OR PROPERTY AND SATISFACTORY PROVISIONS FOR COMPENSATION IN THE EVENT OF ANY SUCH INJURY. ANY CLAIMS AGAINST THE UNITED STATES GOVERNMENT ARISING FROM VISITS OF US FORCES TO NEW ZEALAND WOULD BE DEALT WITH IN ACCORDANCE WITH CUSTOMARY PROCEDURES AND UNDER GENERALLY ACCEPTED PRINCIPLES OF LAW AND EQUITY, AS WOULD BE SIMILAR CLAIMS ARISING FROM VISITS BY US FORCES TO ANY OTHER ALLIED NATION.

7. IF SPECIFICALLY ASKED ABOUT CLAIMS ARISING FROM NUCLEAR WEAPONS, EMBASSY SHOULD INDICATE IT IS NOT AUTHORIZED TO COMMENT ON THIS SUBJECT, BUT MAY DRAW ATTENTION TO GENERALITY OF FINAL SENTENCE IN GUIDANCE SET OUT IN PARA 6.

8. EMBASSY SHOULD PASS AUTHORIZED GUIDANCE (PARA 6) TO GONZ AND INDICATE EMBASSY WOULD USE IT ON AN "IF ASKED" BASIS ONLY. FYI: IF GONZ RAISES SUBJECT OF ADDED

ASSURANCE RE NUCLEAR WEAPONS LIABILITY, EMBASSY SHOULD ACKNOWLEDGE EXISTENCE OF AND NATURE OF ASSURANCE, DRAWING AS APPROPRIATE ON PARAS 1, 2 AND 3. IF GONZ INDICATES DESIRE FOR SIMILAR ASSURANCE, EMBASSY IS AUTHORIZED TO TELL GONZ THAT US WOULD BE PREPARED TO GIVE SUCH ASSURANCE. END FYI. KISSINGER

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